



# CALIFORNIA ASSESSORS' ASSOCIATION

## EXECUTIVE COMMITTEE

### President

**R. GLENN BARNES**  
Mono County  
25 Bryant St., P.O. Box 456  
Bridgeport, CA 93517-0456  
Telephone (760) 932-5510  
Fax (760) 932-5511  
[assrbarnes@qnet.com](mailto:assrbarnes@qnet.com)

### Immediate Past President

**\* CRIS ANDREWS**  
Shasta County  
[candrews@co.shasta.ca.us](mailto:candrews@co.shasta.ca.us)

### President-Elect

**RICK AUERBACH**  
Los Angeles County  
[rauerbac@co.la.ca.us](mailto:rauerbac@co.la.ca.us)

### Vice-President

**MICHAEL STRONG**  
Sutter County  
[mstrong@co.sutter.ca.us](mailto:mstrong@co.sutter.ca.us)

### Treasurer

**\* GREGORY HARCADISTE**  
Tulare County  
[ghardcas@co.tulare.ca.us](mailto:ghardcas@co.tulare.ca.us)

**\* GERALD COCHRAN**  
Del Norte County  
[gcocochran@gte.net](mailto:gcocochran@gte.net)

### \* DAVE PEETS

Alpine County  
[alpineassr@gbis.com](mailto:alpineassr@gbis.com)

### \* BRUCE DEAR

Placer County  
[bdear@placer.ca.gov](mailto:bdear@placer.ca.gov)

### \* JOAN THAYER

Marin County  
[jthayer@co.marin.ca.us](mailto:jthayer@co.marin.ca.us)

### TOM BORDONARO

San Luis Obispo County  
[tbordonaro@co.slo.ca.us](mailto:tbordonaro@co.slo.ca.us)

### EVE LEWIS

Sonoma County  
[elewis@sonoma-county.org](mailto:elewis@sonoma-county.org)

### THOMAS KIDWELL

Madera County  
[tkidwell@madera-county.com](mailto:tkidwell@madera-county.com)

### \* DAVID WYNNE

Tuolumne County  
[dwyne@co.tuolumne.ca.us](mailto:dwyne@co.tuolumne.ca.us)

### Ex-Officio/ Secretary

### KENNETH STIEGER

Sacramento County  
3701 Power Inn Road, Suite 3000  
Sacramento, CA 95826-4329  
Telephone: (916) 875-0760  
Fax: (916) 875-0765  
[stiegerk@sacounty.net](mailto:stiegerk@sacounty.net)

## COMMITTEE CHAIR

### Legislative

**RON THOMSEN**  
Alameda County

### Standards

**DALE FLIPPIN**  
Nevada County

### Conference

**GARY HAZELTON**  
Santa Cruz County

### \*Past President

April 7, 2005

Honorable Board Members  
State Board of Equalization  
450 N Street  
P.O. Box 942879  
Sacramento, CA 94279-0064

## **Re: Position Paper for California Assessors' Association on Use of Factored Increase in Base Year Values**

Dear Honorable Board Members:

### 1. INTRODUCTION

The California Assessors' Association (hereinafter "CAA") offers the following legal and policy position paper on the proposal to reinterpret California Constitution Article XIII A. The assessment process used since 1979 allows for the recovery of the annual inflationary value added to the original base year amount (the "factored base year value"), even if the total assessment increase exceeds 2%, when a property has been in calamity or generally depressed fair market value Proposition 8 status and the fair market value in a tax year again exceeds the factored base year value.

For the reasons set forth below, the CAA strongly urges the State Board of Equalization (hereinafter "SBOE") to reject such a novel interpretation as legally contrary to the California Constitution, Revenue and Taxation section 51, longstanding correct SBOE interpretation, statewide property tax practice, recent appellate litigation on the nature of the "Proposition 8" reductions in assessed value (*Bezaire v. County of Orange* (2004) 117 Cal.App.4<sup>th</sup> 121, and *Titus v. County of Marin*, Case No. A104960 (First App. Dist., 2004)), and the 1979 Legislative Task Force Recommendations on the implementation of Propositions 13 and 8 as approved in 1978.

### 2. PROPOSED REINTERPRETATION OF ARTICLE XIII A

The theory advanced is that it is inappropriate under Article XIII A for a local assessor to add on the trended inflationary portion of the established base year value when he or she is assessing real property that has been in Proposition 8 or R&T Code 170 calamity reduction status and resumes a subsequent fair market value above the normal factored base year value of the property at the end of the depressed fair market value period. This theory is based upon misapplication and misinterpretation of Article XIII A, section 2(a) as well as R&T Code sections 170, 75.10, 75.11 and 51. This theory would allow the assessor to restore only the trended base year value *as it existed prior to the depressed fair market value period or*

*calamity event* without recognition of the annual inflationary factored base year value additions of up to 2% for those years and create what amounts to a new category of event that creates a new base year value without any basis in the constitution.

3. THE CONSTITUTION SUPPORTS THE LONGSTANDING ARTICLE XIII A INTERPRETATION AND PRACTICE SINCE 1979

Article XIII A, section 2(b) states that "The full cash value base may reflect from year to year the inflationary rate not to exceed 2 percent for any given year or reduction as shown in the consumer price index or comparable data for the area..., or may be reduced to reflect substantial damage, destruction or other factors causing a decline in value." This provision *does not limit nor toll* the application of the annual inflationary increase factor under particular circumstances. Article XIII A, section 2, also establishes that the "base year" for real property assessments is established only by setting the base year at the 1975 assessed value (where the owner was the owner in 1978 and is still the owner), a change of ownership or "new construction". The long term landowner holding title since 1978 is not the issue in this SBOE matter. The CAA focuses its comments on base year establishment by a change in ownership or new construction.

The proponent of reinterpreting existing law argues that the portion of Article XIII A, section 2(b) stating in relevant part that the full cash value base "... , or may be reduced to reflect substantial damage, destruction or other factors causing a decline in value" should be read as a totally separate authorization for creating a new base year value subject to inflationary adjustment without acknowledging that he is creating a new base year. This view has no support in property tax law and also ignores the complete context of section 2(b) as well as Article XIII A generally. Section 2(b), read in full, makes it clear that the local assessor is allowed to recognize significant declines in value due to disasters or other factors causing a decline in value and temporarily enroll the lower fair market value when it is lower than the established base year. This is precisely why section 2(b) was added to Article XIII A in November of 1978. It is not authority for establishing a new permanent base year value outside of the change in ownership or new construction events recognized by Article XIII A, section 2(a).

Article XIII A is very specific about how a base year value is established and altered. It does not allow for the de facto creation of a new base year value where the owner's enjoyment of his or her property is subject to temporary loss of value due to calamity circumstances as allowed in R&T Code section 170 or because of "other factors causing a decline in value." Further, R&T Code section 170 is only a statute, not

a constitutional amendment. As such, R&T Code section 170 must be interpreted in a fashion *consistent with, and not inconsistent* with, the higher legal authority. Thus, the decline in value must be temporary in nature. Two appellate courts have already held that the general Proposition 8 and R&T Code section 170 reductions are temporary, not permanent. See *Bezaire v. County of Orange, supra*, and *Titus v. County of Marin, supra*. The theory that an established base year is not subject to annual inflation adjustments is blatantly inconsistent with the relevant rulings of the courts cited above. Further, the 1979 Legislative Task Force (see an excellent and concise description of that ad hoc committee in *Leckie v. County of Orange* (1998) 65 Cal.App.4<sup>th</sup> 334, at 337) created to recommend interpretation and implementation measures for Propositions 13 and 8 recommended R&T Code sections 50 and following as the appropriate interpretation of Article XIII A. R&T Code sections 50 and following mandate the current assessment practices as the legislative interpretation and implementation of this Article.

#### 4. R&T CODE SECTIONS 50 AND FOLLOWING REQUIRE THE CURRENT ASSESSMENT PRACTICES

R&T Code sections 50 and following require the current assessment practices. R&T Code section 51 (a) (1) and (2) requires the assessor to enroll the lesser of the real property's base year value "compounded annually since the base year by an inflation factor" or its "full cash value" (the current fair market value) as set forth in R&T Code section 110. This is a mandatory enrollment comparison process regardless of the particular characteristics of the assessed property. The subsection (a) valuation process is also incorporated into subsection 51(b) (see section 51(b)(1)). R&T Code section 51(b), a subsection relied upon by the reinterpretation proponent, applies by its own terms *only when the county does not have a R&T section 170*. It sets forth a "lesser than" valuation formula for real property damaged by section 170 circumstances for such properties in that county. The vast majority of California's counties have standing or specific occurrence section 170 ordinances, making section 51(b) inapplicable to those jurisdictions. Section 51(b), then, cannot serve as legislative support for the proposed broad reinterpretation. R&T Code section 51 does not authorize in any manner the elimination of the annual inflation factor application as an element of the calculated base year value required by its provisions. The proposed reinterpretation does the exact opposite of what R&T Code section 51 requires, namely *intentionally omitting the annual inflationary adjustment to the base year value* for the decline period from the base year value calculation when the real property fair market value has recovered from the factors causing a decline below the base year value. The net effect of the proposed reinterpretation is to create a

*new base year value* and a new commencement of inflationary adjustments period because of the temporary R&T Code 170 or Proposition 8 decline status *without any change in ownership or new construction occurring*. This is in direct contradiction to the provisions of Article XIII A and these R&T Code sections. This is a variation, in legal effect, of the novel statutory interpretations unsuccessfully urged upon successive appellate courts in the published case of *Bezaire v. Orange County, supra*, and the currently unpublished decision in *Titus v. Marin County, supra*. Both courts rejected the faulty reasoning alleging the creation of a permanent base year reduction due to Proposition 8 reductions. This faulty reasoning should not be resuscitated by SBOE reinterpretation of the law.

The concept of a "base year" value, the events creating a base year value, and the legal necessity of annually adjusting it after establishment for inflation with a 2 percent cap, are all very clearly stated in California law. These are fundamental requirements of Article XIII A, long recognized, judicially approved, and have also been approved by the SBOE since 1979 on a regulatory basis. Proponents of a different assessment system cannot achieve their goal of changing existing California property tax law by simply asking the SBOE to change its view of the law. It is also the statutory mission of the SBOE to implement the law as it exists and to not make legislative or constitutional changes that are reserved to the Legislature and the voters of California.

5. THE SBOE HAS CORRECTLY INTERPRETED AND IMPLEMENTED R&T CODE SECTION 51 CONSISTENT WITH THE 1979 TASK FORCE FOR OVER 25 YEARS

The SBOE has implemented the current application of the annual inflationary base year adjustments, consistent with the 1979 Task Force, for over 25 years now. See, for example, the administrative guidance found in the Assessors' Handbook 501, *Basic Appraisal*, pages 140-41, and Letters to Assessors ("LTA") Nos. 82/12, 82/25, 95/31, and 99/53. LTA 99/53 states the SBOE position in a concise fashion when it says the following:

"Following the year a base year value is first Enrolled, the value *shall* be factored annually For inflation.... The purpose of this letter is to *re-emphasize* that the application of the annual inflation factor to base year values is *mandatory*... [T]he factoring of the base year value is applied Annually regardless of whether the base year is actually enrolled. The *only* instance in which a base year value would not be adjusted for inflation would be where the percentage change in the CCPI [California Consumer Price Index] was zero or less than zero." (Emphasis added)

The SBOE has been correct to so state as a requirement of consistency with Article XIII A and the resulting R&T Code statutes. The CAA respectfully urges that the SBOE maintain its legally correct regulatory view of this matter.

6. NEITHER R&T CODE SECTION 75.10 NOR R&T CODE SECTION 75.11 SUPPORTS REINTERPRETATION OF ARTICLE XIII A

R&T Code section 75.10 addresses the new base year valuation of property “whenever a change in ownership occurs or new construction resulting from actual physical new construction on the site is completed...” This provision echoes and implements Article XIII A, section 2(a). Section 75.10(b) refers to section 51(b) which is discussed elsewhere in this paper. Section 75.11 compliments its neighbor section by discussing the issuance of supplement assessments when change in ownership or new construction events occur. Both of these statutory sections are fully consistent with the existing law on the establishment and adjustment of base year values. Neither of them assist in any way the reinterpretation proponent. Neither of them address how the inflationary or “factored” portion of the a base year value should be applied and they do not state in any fashion that a de facto base year value can be established by because of section 170 or Proposition 8 decline circumstances. These sections, in fact, by their focus on change of ownership and new construction events, further illustrate how the current legal interpretation of Article XIII A is the correct view.

7. THE 1979 LEGISLATIVE TASK FORCE RECOMMENDATIONS ARE CONSISTENT WITH THE CURRENT PRACTICES AND INTERPRETATION

The 1979 Legislative Task Force (“Task Force”) was a group of private parties, state and local government officials, and legislative staffers familiar with property tax law created to examine the then-newly enacted Propositions 13 and 8 and recommend how the measures should be implemented. Their recommendations were embodied in legislative measures enacted in the summer of 1979 (R&T Code sections 50 and following). The SBOE, from that point on, enacted regulations and issued interpretation statements consistent with the Task Force and resulting legislation. The proposed reinterpretation would go directly against those recommendations and legislative enactments as well as the SBOE guidance based upon the above authorities. See Table IV, pages 14 and 15, of Volume 1 of the October 1979 “Property Tax Assessment” report from the Assembly Revenue and Taxation Committee staff for a graph summary of how Article XIII A operates, based upon the Task Force recommendations.

The CAA submits examples below of how the proposed reinterpretation would result in incorrect

assessments and creation of a new base year.

**CALAMITY EXAMPLE 1:** Two identical, fifteen-year-old tract homes. Home A is destroyed by fire in 2001. The appraiser determines that land values continue to appreciate during the period from the calamity to full restoration. Home A is rebuilt in 2003. For simplicity, supplementals are not a factor.

Home A				
Year	2000	2001	2002	2003
Improvements	\$250,000	\$0	\$0	\$250,000
Land	\$250,000	\$255,000	\$260,100	\$265,302
Tot AV	\$500,000	\$255,000	\$260,100	\$515,302
Est. Taxes 1%	\$5,000	\$2,550	\$2,601	\$5,153

Home B				
Year	2000	2001	2002	2003
Improvements	\$250,000	\$255,000	\$260,100	\$265,302
Land	\$250,000	\$255,000	\$260,100	\$265,302
Tot AV	\$500,000	\$510,000	\$520,200	\$530,604
Est. Taxes 1%	\$5,000	\$5,100	\$5,202	\$5,306

**PROP 8, EXAMPLE 2.** Two identical, ten-year-old tract homes. Home C was purchased in 1998 at the top of the market. Home D has never transferred ownership since it was originally constructed.

Between 1998 and 2004 the residential market first declined and then rebounded. Consequently, the Assessor's Office initially reduced and then restored the assessed value to reflect the fluctuating market place.

During this time, the CPI exceeded 2% each year. Consequently, the local Assessor added the 2% inflation factor pursuant to Proposition 13. Under current practices the assessed value of Home C would be restored to \$450,465. In your proposal, the assessed value of Home C would be \$408,000 since you believe the home should not be subject to the maximum 2% inflation factor during the period it is in a Proposition 8 decline status.

Home C							
Year	1998	1999	2000	2001	2002	2003	2004
Improvements	\$200,000	\$150,000	\$125,000	\$110,000	\$160,000	\$200,000	\$204,000
Land	\$200,000	\$150,000	\$125,000	\$110,000	\$160,000	\$200,000	\$204,000
Tot AV	\$400,000	\$300,000	\$250,000	\$220,000	\$320,000	\$400,000	\$408,000
Market Value	\$400,000	\$300,000	\$250,000	\$225,000	\$325,000	\$400,000	\$475,000
Est. Taxes 1%	\$4,000	\$3,000	\$2,500	\$2,200	\$3,200	\$4,000	\$4,080

In summary, the CAA respectfully urges the SBOE to reject the novel and legally unsupportable property tax assessment theory advanced for hearing on April 12, 2005. The reasons are set forth above.

Sincerely,

A handwritten signature in cursive script that reads "R. Glenn Barnes". The signature is written in dark ink and is positioned above the printed name.

R. Glenn Barnes, President  
California Assessors' Association